

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
MARITIME COMMUNICATIONS/LAND ) FCC 11-64  
MOBILE, LLC ) EB Docket No. 11-71  
 ) File No. EB-09-IH-1751  
 ) FRN: 0013587779  
Participant in Auction 61 and Licensee of Various ) Application File No.  
Authorizations in the Wireless Radio Services ) 0002303355  
 )  
Applicant for Modification of Various Authorizations in the )  
Wireless Radio Services )  
 )  
Applicant with ENCANA OIL AND GAS (USA), INC.; ) Application File Nos.  
DUQUESNE LIGHT COMPANY; DCP MIDSTREAM, LP; ) 0004030479, 0004144435,  
JACKSON COUNTY RURAL MEMBERSHIP ELECTRIC ) 0004193028, 0004193328,  
COOPERATIVE; PUGET SOUND ENERGY, INC.; ) 0004354053, 0004309872,  
ENBRIDGE ENERGY COMPANY, INC.; INTERSTATE ) 0004310060, 0004314903,  
POWER AND LIGHT COMPANY; WISCONSIN POWER ) 0004315013, 0004430505,  
AND LIGHT COMPANY; DIXIE ELECTRIC MEMBERSHIP ) 0004417199, 0004419431,  
CORPORATION, INC.; ATLAS PIPELINE -- MID ) 0004422320, 0004422329,  
CONTINENT, LLC; DENTON COUNTY ELECTRIC ) 0004507921, 0004153701,  
COOPERATIVE, INC., DBA COSERV ELECTRIC; AND ) 0004526264, 0004636537  
SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY ) and 0004604962  
 )  
For Commission Consent to the Assignment of Various )  
Authorizations in the Wireless Radio Services )  
 )  
 )

To: Marlene H. Dortch, Office of the Secretary  
Attn: Hon. Richard L. Sippel, Chief Administrative Law Judge

Motion to Enlarge Issues<sup>1</sup>

The undersigned parties (“SkyTel”) submit this motion to enlarge issues in the Commission's Order to Show Cause and Hearing Designation Order (the “OSC” or “HDO”)

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<sup>1</sup> This Motion to Enlarge is being filed in paper with the FCC; however, SkyTel intends to supplement this Motion to Enlarge prior to the end of today, June 8, 2011, and file it in the EB Docket No. 11-71 and under the applications captioned above.

regarding Maritime Communications/Land Mobile LLC (“MCLM”) and the other assignee parties listed in the OSC caption (the “Other Parties” or the “Assignees”).<sup>2</sup>

The SkyTel Parties severally and jointly submit this motion under FCC rule Section 1.229.

For reasons stated in their recently served Request for Admissions served upon each other Party, which are referenced and incorporated herein, SkyTel asserts that it has a right to amend this Motion once SkyTel obtains substitute counsel to the Nossaman law firm that withdrew from representation of SkyTel due to a conflict created (Nossaman found that its representation of Los Angeles County- SCRRA creates a conflict, and they would not provide a conflict waiver.) SkyTel is diligently, with Nossaman, seeking substitute counsel.

Herein, “SkyTel” means Skybridge Spectrum Foundation (“Skybridge”) and the other undersigned Parties (all are managed by Warren Havens).

“MCLM,” when used herein or in attachments or referenced documents, means the same as “Maritime,” which means Maritime Communications/ Land Mobile LLC, and its real owners and controllers as well as their agents, predecessors and successors in interest, and others associated sufficiently for purposes of issues in this hearing.

The “Hearing” means the hearing under the FCC Order to Show Cause (“OSC”), FCC 11-64, and the “ALJ” means the Administrative Law Judge in the Hearing. (The “Hearing” is also called herein the “HDO proceeding” in places.)

“FCC” unless otherwise delimited, means a part or any part of the FCC as the context shows.

SkyTel requests that the Administrative Law Judge enlarge the HDO proceeding to include the following additional issues:

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<sup>2</sup> *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, FCC 11-64, released April 19, 2011, 76 FR 30154.

## **I. Timing and Procedure Issues**

SkyTel raises the following as threshold procedural issues in this Motion to Enlarge. Both of these issues have been presented multiple times in pleadings and other writings to all other Parties to this Hearing, and to the FCC Wireless Bureau, Enforcement Bureau, and Office of General Counsel.

### **1. SkyTel Parties Hearing Rights Under 47 USC §309(d): Said Hearings on all OSC Applications, Commencing with Maritime Long Form Must Precede this OSC Hearing**

This issue is presented by SkyTel in the email in Exhibit 1 hereto which is referenced and incorporated herein. This Hearing should not proceed prior to the completion of said Section 309(d) hearings, and of those, the first one should be on the Maritime Long-Form application in Auction 61.

### **2. Unlawful Denial of Skybridge FOIA Request in Year 2010 of Information Essential to this Hearing, Effectively Admitted to by FCC in Recent Weeks: Prejudice to SkyTel Parties**

See Exhibit 1 hereto which is referenced and incorporated herein. The issues which SkyTel seeks to add to this Hearing as threshold procedural issues are (i) the prejudice described in Exhibit 1, and related thereto, (2) that this Hearing should be stayed until the information sought in the described FOIA request is publicly released and made available to SkyTel and other Parties in this Hearing, otherwise, the Parties, at least SkyTel Parties, are prejudiced and will challenge the legitimacy of the Hearing process.

## **II. Substantive Issues**

### **Preface to Section II**

47 USC §411 provides (underlining added):

Joinder of Parties.

(a) In any proceeding for the enforcement of the provisions of this Act, whether such proceeding be instituted before the Commission or be begun originally in

any district court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the charge, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

47 USC § 412 provides (underlining added):

Documents Filed To Be Public Records—Use in Proceedings.

The copies of schedules of charges, classifications, and of all contracts, agreements, and arrangements between common carriers filed with the Commission as herein provided, and the statistics, tables, and figures contained in the annual or other reports of carriers and other persons made to the Commission as required under the provisions of this Act shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of and extracts from any of said schedules, classifications, contracts, agreements, arrangements, or reports made public records as aforesaid, certified by the secretary, under the Commission's seal, shall be received in evidence with like effect as the originals:

The above two statutes are relevant to many of the issues posed in this Section II below.

1. Section 309 issues.

If said Section 309(d) petition to deny headings are not held and completed before the Hearing, then all of the fact, arguments and issues in them should be in this Hearing. On that contingent basis, SkyTel ask these to be included in the Hearing: this applies to other issues described herein including those below.

2. Misrepresentations and Misconduct Issue,  
as to Maritime  
and All Parties That are Assignees of Maritime Licensed Spectrum

See FCC rule section 1.229(f). The OSC and this Hearing appear to include the sort of misrepresentation and misconduct in the subject Maritime Auction 61 Long Form application described in said rule, but if the ALJ does not find that to be the case, then SkyTel moves that this issue be added.

In addition, SkyTel moves that this same issue of misrepresentation and misconduct be added in this Hearing as to all other Parties that are the assignees and lessees of Maritime licensed spectrum listed in the OSC, excluding Puget Sound Energy.<sup>3</sup> The misconduct by all said Parties is essentially deliberate laundering of unlawfully obtained, invalid, MCLM licensed spectrum, and the misrepresentation essentially is that all said Parties repeatedly represented untruthfully to the FCC in their respective application listed in the OSC that they are unaware of any facts or law as to said MCLM license defects and MCLM licensee disqualification. Petitioners refer to and incorporate herein the facts and arguments on these matters in their pleadings in their petition to deny proceeding on each said application.

3. Lessees of Maritime spectrum,  
and misrepresentation and misconduct of said lessees.

For the same reason that the Maritime spectrum assignees are Parties and otherwise subject to discovery in this Hearing, so should all the Maritime spectrum lessees. All said leases may be identified easily on ULS under the subject MCLM AMTS licenses.

See Attachment A hereto that contains a list of the MCLM leases and the lessees under those leases. Those leases and the lessees thereto should be included in the HDO proceeding since the leases are under the MCLM FCC licenses subject of the HDO proceeding already and since the lessees must have information of relevance to MCLM and the HDO proceeding, including, but not limited to, lease agreements or other contracts and understandings, written and oral communications regarding MCLM and its licensed spectrum subject of the HDO proceeding, representations and warranties from MCLM, and other information relevant to the HDO proceeding or that can be obtained through discovery. The lessees should be subject to the HDO proceeding so that they are subject to discovery in the HDO proceeding that could provide

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<sup>3</sup> For reasons indicated by PSE in the records of the assignment application from Maritime to PSE captioned in the OSC, PSE is not subject to the issue raised in this subsection II.3 of this Motion.

valuable and substantial information of decisional significance to the HDO proceeding. It is clearly in the public interest for the HDO proceeding to be enlarged to include the MCLM leases and the lessees under those leases.

#### 4. AMTRAK

SkyTel requests that the HDO proceeding be enlarged to include AMTRAK as a party for the following reasons:

(i) SkyTel has a copy of a MCLM proposal to AMTRAK to sell AMTRAK its AMTS licensed spectrum. SkyTel's petitions and pleadings in the record before the FCC, including in the HDO proceeding and Enforcement Bureau discuss and provide details on this MCLM proposal to AMTRAK.

(ii) The FCC has commenced a docketed proceeding regarding AMTRAK proposed use of AMTS spectrum and associated waiver requests to use said spectrum: WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) REQUEST FOR WAIVER OF CERTAIN PART 80 AUTOMATED MARITIME TELECOMMUNICATIONS SYSTEM (AMTS) RULES TO IMPLEMENT POSITIVE TRAIN CONTROL (PTC) WT Docket No. 11-27. The spectrum subject of the AMTRAK waiver requests can only be the MCLM spectrum since AMTRAK does not have a contract with any of the SkyTel entities who hold both the A and B block AMTS geographic AMTS spectrum in the AMTRAK Northeast corridor. Also, as noted above, SkyTel obtained a copy of the MCLM proposal.

(iii) In response to Skybridge Spectrum Foundation's FOIA Request, FOIA Control No. 2011-241, to the FCC, the FCC provided email communications between FCC staff and Mr. John Reardon of MCLM regarding an MCLM deal with AMTRAK and possible assignment application(s) (See Exhibit 2 hereto). This further shows that MCLM and AMTRAK were discussing a purchase of MCLM's AMTS spectrum subject to the HDO proceeding. Information

from AMTRAK by way of its being subject to this Hearing will be valuable to the issues in this Hearing.

#### 5. Spectrum Bridge Inc.

SkyTel requests that the HDO proceeding be enlarged to include Spectrum Bridge, Inc. SkyTel in its petitions and pleadings that are part of the OSC proceeding, and that are referenced and incorporated herein, showed with facts that Spectrum Bridge, Inc. and MCLM have an agreement where Spectrum Bridge, Inc. is the broker of all of MCLM's spectrum. MCLM has also admitted to that in public documents (see e.g. [http://urgentcomm.com/networks\\_and\\_systems/news/spectrum-bridge-vhf-spectrum-1008/](http://urgentcomm.com/networks_and_systems/news/spectrum-bridge-vhf-spectrum-1008/)).

Also, the SkyTel pleadings, including regarding the SCRRRA application, showed that Spectrum Bridge, Inc. did a fair market valuation of MCLM's AMTS spectrum for SCRRRA and provided other history and background information to SCRRRA regarding AMTS incumbent spectrum, including that held by MCLM that is subject of the HDO proceeding. Therefore, Spectrum Bridge, Inc. clearly has relevant information regarding MCLM and the MCLM licenses subject of the HDO and it is in the public interest that the proceeding be enlarged to include it, including, but not limited to, allowing discovery of Spectrum Bridge, Inc. by the FCC and SkyTel. Spectrum Bridge, Inc. clearly has a contract, agreement or understanding with MCLM to market and sell MCLM's AMTS spectrum subject of the HDO, is MCLM's broker, had to have conducted due diligence on MCLM and its licensed spectrum and been aware of the defects stated in the OSC, must have representations and warranties from MCLM, and must have written and oral communications with MCLM and its alleged officers, employees, etc., all of which are relevant to the OSC proceeding and could be of decisional significance.

#### 6. MariTel, Inc. and Wireless Properties of Virginia, Inc.

The HDO proceeding should be enlarged to include MariTel, Inc. and Wireless Properties of Virginia, Inc. (“WPV”) and their FCC licenses and the issues surrounding their FCC licenses for the reasons that are already given in SkyTel’s petitions and other pleadings that are already part of the OSC proceeding. SkyTel hereby references and incorporates herein its petitions and pleadings and their facts and arguments regarding MariTel and WPV and their relevance to the OSC proceeding and MCLM. SkyTel’s petitions showed that MariTel and WPV had the same controlling interest as MCLM, Donald DePriest, and that they are closely aligned affiliates of MCLM. MariTel and WPV clearly have information relevant to the HDO Proceeding and should be subject to discovery by the FCC and SkyTel. Also, the issues regarding the MariTel and WPV licenses relate to the MCLM issues since the controlling interest holder is the same in all of them, Donald DePriest. Thus, it is appropriate that they be included in the HDO proceeding.

#### 7. Other MCLM Officers, Directors, Employees

SkyTel requests that the HDO proceeding be enlarged to include the other parties identified in the SkyTel petitions and pleadings before the FCC and in the HDO proceeding record, which are fully referenced and incorporated herein, that show other MCLM officers, directors, employees, and personnel not listed in the HDO proceeding, but who actively aided and abetted MCLM’s rules violations. These other parties include, but are not limited to: John Reardon, Tim Smith, and Belinda Hudson. As with Sandra and Donald DePriest, they should also be part of the HDO proceeding and subject to disqualification from ever being an FCC licensee. In addition, they should be subject to discovery in the HDO proceeding since they clearly must have direct and personal knowledge of MCLM, the DePriests, and their contracts, agreements, actions and communications with other parties, including, but not limited to, assignees, lessees, prospective assignees, etc.

## 8. Violation of US Criminal Code

An issue that should be added, absent which the FCC's licensing rules, applications, and proceedings references and warnings as to violations of the US Criminal Code (28 UCS §1001 et seq) (the "Criminal Code") in the case of false stations and certifications have no real meaning, is whether Maritime, and the assignees and lessees of its licensed spectrum, violated this Criminal Code and if so, the FCC should refer the matter to the Department of Justice ("DOJ"). A DOJ finding of violation would then be a factor, possibly decisive, in the licensing actions in the Hearing and the qualifications of Maritime and its spectrum assignees and lessees. In short, the sort of blatant cheating, warehousing, and laundering attempts by these parties, employing misrepresentation to the FCC, is indeed violation of the Criminal Code and must be pursued. If in a hearing such as this Hearing, this is not pursued, then when will it be?

## 9. Censure, Suspension, and Disbarment

SkyTel requests that the HDO proceeding be enlarged to include the issue of disbarment as to practice before the FCC of each attorney at law, or alleged attorney at law (assertions appears to be accepted with no proof) that represented Maritime in its actions described in the OSC and now in this Hearing, and any attorney that represented the assignees and lessees of Maritime spectrum, should be disbarred or otherwise prohibited from further practice before the FCC, and also censured and fined, including under FCC rule sections 1.24, and 1.17 and 1.52. Maritime and said assignees and lessees acted via counsel (with a few minor exceptions) in all said licensing actions. They often speciously suggested that they did not understand their actions, or failures, or words, since they were acting via counsel, or their counsel suggested they did not know what they were really doing. This is nonsense. This is not practice of law, not to uphold the law or rights under the law, but to evade and subvert the law. Again, if in a hearing such as this rare Hearing, the instruments of the wrongdoing—the

attorneys who perpetuated and attempted to cover it up—are not seriously sanctioned, then this will continue.

Sincerely,



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Warren Havens, Individually and as President of the below listed entities (collectively,  
“SkyTel”)

Skybridge Spectrum Foundation, FRN 0016374563  
Environmental LLC, FRN 0011257086  
Intelligent Transportation & Monitoring Wireless LLC, FRN 0012930582  
Verde Systems LLC, FRN 0009561002  
Telesaurus Holdings GB LLC, FRN 0005748660  
V2G LLC, FRN 0019661297  
Warren Havens, FRN 0003787694

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June 8, 2011

Attachment A

<u>Lease File No.</u>	<u>Lessee</u>	<u>Lessor<sup>4</sup></u>
<a href="#">0004637692</a>	Atlas Pipeline - Mid Continent LLC	MC/LM LLC
<a href="#">0004299874</a>	DCP Midstream LP	MC/LM LLC
<a href="#">0004651810</a>	Denton County Electric Cooperative, Inc.	MC/LM LLC
<a href="#">0004526878</a>	Dixie Electric Membership Corporation	MC/LM LLC
<a href="#">0004610535</a>	Enbridge Energy Company, Inc.	MC/LM LLC
<a href="#">0003388394</a>	EnCana Oil & Gas (USA), Inc.	MC/LM LLC
<a href="#">0003557125</a>	EnCana Oil & Gas (USA), Inc.	MC/LM LLC
<a href="#">0004692898</a>	EnCana Oil & Gas (USA), Inc.	MC/LM LLC
<a href="#">0004310033</a>	Jackson County Rural Membership Electric Cooperative	MC/LM LLC
<a href="#">0003581575</a>	NRTC, LLC	MC/LM LLC
<a href="#">0003834236</a>	Pinnacle Wireless, Inc.	MC/LM LLC
<a href="#">0004136453</a>	Pinnacle Wireless, Inc.	MC/LM LLC
<a href="#">0004299995</a>	Questar Market Resources, Inc.	MC/LM LLC
<a href="#">0003796473</a>	Spectrum Tracking Systems, Inc.	MC/LM LLC

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<sup>4</sup> The Lessor for all of the leases in this list is Maritime Communications/Land Mobile LLC denoted in the list by “MC/LM LLC”.

Declaration

I, Warren C. Havens, hereby declare, under penalty of perjury, that the foregoing Motion to Enlarge Issues was prepared pursuant to my direction and control and that all the factual statements and representations of which I have direct knowledge contained herein are true and correct.



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Warren C. Havens

June 8, 2011

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a copy of the foregoing **Motion to Enlarge Issues** along with this executed Certificate of Service is being served this 8<sup>th</sup> day of June 2011, via U.S. Mail, first class postage prepaid, upon the following:<sup>5/6</sup>

Honorable Richard L. Sippel  
**Chief Administrative Law Judge  
Office of Administrative Law Judges  
Federal Communications Commission**  
445 12th Street SW  
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Email: [Richard.sippel@fcc.gov](mailto:Richard.sippel@fcc.gov)

P. Michele Ellison,  
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<sup>5</sup> The mailed, served copy being placed into a USPS drop-box today may be after business hours, and therefore, not be processed by the USPS until the next business day.

<sup>6</sup> A courtesy PDF copy of this Motion is also being provided via email to the parties.

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